1949 K File No. O. Industrial Disputes/49

Legal DEPARTMENT
A BRANCH

Subject:— Opinions under the Industrial Disputes Act, 1947.

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File No. O. Industrial Disputes/49

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C O N T E N T S.

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C O N T E N T S.

Legal Department File No. C, Indus Disputes/49.

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12.	C.M. ~~14317~~ W/12/1949.	Section 10. Whether dispute between Cmp Mr.Bhagubhai and his employees can be referred to Tribunal for adjudication.	59-60.

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Office of the R.L.A.

The Industrial Tribunal has already given its award in the dispute between the Firestone Tyre and Rubber Co. of India Ltd. and it-s workmen and the same was made binding under sec. 15 (2) read with section 19(3) of the Industrial Disputes Act, 1947 directing that it shall remain in operation for a period of one year from 29-7-1948. The decision of the Tribunal rejecting the claim for reinstatement with compensation is therefore binding on the parties for this period and cannot be called in question in any manner. (See sub-section (4) of section 19). But the proviso to sub-section (3) of section 19 provides that if there is a material change in the circumstances on which the award was based the Government may refer the same to a Tribunal for a decision whether or not the period of the operation of the award should be determined. In view of the High Court decision in Appeal No. 31 of 1948 (Province of Bombay v. Western India Automobile Association reinstatement of the dismissed workers is possible and till reversed by the Federal Court in the appeal preferred by the Association it will stand. The decision of the High Court can in the present case be deemed to be a material change in the circumstances on which the award was based and therefore there appears no objection to Government referring the award afresh to the Tribunal under the proviso to sub-section (3) of section 19 of the Act. As judgment in the appeal

to the Federal Court is likely to be delivered soon it would be advisable to await its decision on the question of reinstatement before referring the dispute afresh to the Tribunal.

Id/-
31/12
Remembrancer of Legal Affairs.

U.R. to Labour Department No. 37
Dated the 3rd January 1949.

Office of the R.L.A.

Sub-section (2) of section 24 of the Industrial Disputes Act, 1947 provides that where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, or Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub-section (3) of section 10. Sub-section (3) of section 10 provides that where an industrial dispute has been referred to a Board or Tribunal under this section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference. It is not clear from the report of the Deputy Director of Labour Administration, Ahmedabad whether lock-out was in existence on the date of the reference to adjudication under/ section 10(1) in cases Nos. 1, 2, 3, 4 and 5. If the lock-out was in existence on the date of the reference to adjudication there appears to be prima facie a good case for prosecution against them; and both the employers and their lessees may be prosecuted wherever the employer have executed such leases. Similarly if Mr. Vanmalidas Devchand (No. 10) discharged the two workers during the pendency

Rule.

of the proceedings before the Tribunal with a view to alter their conditions of the service he may be prosecuted under section 35 read with section 31 of the Act.

Id/-

5/2

Remembrancer of Legal Affairs.

U.R. to Labour Department No. 1472

Dated the 7th February 1949.

Office of the R.L.A.

Delegation by Tribunal to Government Labour Officer adjudication in respect of demand 6.

Industrial Disputes Act, 1947. sec. 15(1).

Sub-section (1) of section 15 of the Industrial Disputes Act, 1947, provides that where an industrial dispute has been referred to a Tribunal for adjudicati-on it shall hold its proceedings expeditiously and shall as soon as practicable on the conclusion thereof submit its award to the appropriate Government. Section 16 requires that the award shall be in writing and shall be signed by all the members of the Tribunal. "Award" as defined by clause (b) of section 2 means an interim or final determination by the Industrial Tribunal of any industrial dispute or of any question relating thereto. By para. 12 of the award the Tribunal has directed that as regards demand No.6 the Government Labour Officer shall inquire and his decision after hearing the parties shall be binding to both. (please see also para. 20(6)). It is clear from this para that the Government Labour Officer is delegated the duty of determining the dispute relating to demand No.6. The rule delegatus non protest delegare will apply in this case. The Tribunal having been clothed with judicial functions cannot delegate the discharge of those functions to another unless it is expressly empowered to do so (see R. V. Lloyd (1906) 1 K.B. 22 and other cases cited in Broom's Legal Maxims, p.572). The power to determine the dispute is conferred by section 15(1) on the Industrial Tribunal and there is no provision in the Act empowering the delegation of the discharge of these functions. Consequently, this power cannot be passed on to the Government Labour Officer who is in no way subordinate to the Tribunal. The Order of the Tribunal regarding demand 6 would be ultra vires and as it amounts to refusal to exercise powers, which the Tribunal cannot do, the Tribunal may be asked to

exercise its powers and pass the necessary order in respect of demand 6.

Rs/-

28/1.

Remembrancer of Legal Affairs.

U.R. to Labour Deptt., No. 1094 dated the 29th Jan.'49.

Office of the E. L. A.

The word "establishment" has not been defined in the Act. The dictionary meaning of the word is "an organized staff of employees or servants often including and s-ometimes limited to the building in which they are located": Murray's New English Dictionary, Vol.3,p.299. Following this definition the establishment at Sewree would naturally have to be considered as an establishment distinct from the establishment at Ballard Estate, though both may be under the management of the s-ame company. The whole idea of a Works Committee is that it should try to discuss matters of common interest or concern to the employer and the workmen. It is obvious that matters which interest the workers at Sewree may b entirely different from those which interest the workers at Ballard Estate. Moreover, if a Works Committee to represent different establishments also dispersed territorially were to be constituted, it would be difficult for that Committee to function smoothly by convening meetings etc. Having regard to all these considerations I am inclined to hold that there should be a separate Works Committe for the establishment at Sewree and another for the establishment at Ballard Estate provided both the Head Dyes Staff and workmen and the Bombay Divisional Sales Office Staff and workers are located in t he same building at Ballard Estate.

Id/-

19/2

Remembrancer of Legal Affairs

U.R. to Labour Department. No. 3031, dated 19th February 1949

L.D. R. I. No. 2020. dt. 11.8.49.

Sumitted.

See pp.27-29 and p. 65 ante.

Pl. see letter from Goodlass, Wall (India) Ltd., at pp. 19-31 ante. The Co., in para 5 of its notice dated 3.12.48. made it clear that all candidates wishing to go up for election must be employed in the particular section for which they are seeking representation and nomination papers must be signed by any 2 voters belonging to the particular electoral constituency. The Employees Union are opposed to this. Secy. Labour Deptt. observes as follows:-

> "The Proviso to rule 37 expressly permits sub-division of the constituencies. At the same time, eligibility of candidates is governed entirely by rule 38 and cannot be added to. Hence the Co., may be advised that the plea of the Union at p. 71 is correct. R.L.A. may kindly confirm."

Office of the R. L. A.

Question whether candidates for Works Committee should be from the same category, group or class of workmen.
Industrial Disputes Act 1947 --
Section 3.
Rules 36,37,38 and 41.

Seen and returned.

2, The view taken by the Secretary, Labour Department, at page 77 ante, is correct.

Id/- 8/3

Remembrancer of Legal Affairs.

R.R. to Lab.Deptt., No. 2672, dated the 9th March 49.

Office of the R. L. A.

Industrial Disputes Act, 1947.
Sec.2(s).
Industrial Employment (Standing Orders) Act, 1946,
Sec.2(i).

Attention is invited to R.L.A's opinions No.9465, dated the 24th September 1947, No.10968, dated the 20th November 1948 and No.39, dated the 3rd January 1949, and particularly to opinion No.9218, dated the 29th September 1948 where the whole question is exhaustively discussed. In the light of these opinions the view expressed by the Ministry of Labour, Government of India in their letter No.DY.8360-L.R., dated 23-9-1948 that the technical and supervisory staff employed in the Textile industry in Bombay have not been excluded from the purview of the Industrial Disputes Act appears to be correct; but whether or not they would be entitled to the benefit will have to be determined with reference to the nature of work done by them.

Id/-
4/4

Remembrancer of Legal Affairs.

U.R. to Lab.Deptt., No. 5684, dated the 6th April 1949.

Office of the R. L. A.

Question whether when some workers resume, the strike can be said to be at an end.

Industrial Disputes Act, 1947, Section 2(1) (q).

'Strike' as defined by clause (q) of section 2 of the Industrial Disputes Act, 1947, means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment. The strike is not illegal as no order under sub-section (3) of section 10 is issued; nor are any conciliation proceedings before a Board or proceedings before a Tribunal pending. Since the Union has not agreed to withdraw the strike and the majority of the workers have not yet rejoined it would not be possible to hold that the strike is at an end. The refusal by the employers to continue to employ the workers who might like to resume work even after the fortnight's period expires would amount to a lock-out within the definition of that term as given in section 2(1) of the Act.

Id/-
21/4

Remembrancer of Legal Affairs.

U.R. to Labour Department, No. 4381, dated the 21st April 1949.

Office of the R. I. A.

Please see paragraph 8 of the order of the Industrial Tribunal dated 31-8-1949 in the case of Western India Tanneries Ltd. v. The workmen employed under it. While allowing the company to discharge 20 workers, the Tribunal has remarked that it does not agree with the interpretation put in on section 33 of the Industrial Disputes Act,1947, by the Tribunal consisting of D.B. Kamerkar and followed by Mr. Salim M. Merchant in another case. Since the view expressed by the Tribunal (consisting of Hon'ble Mr. K.C. Sen) differs from the opinion No.314 dated 10-1-48 expressed by the R.L.A., the papers are shown to him with a request to reconsider his previous opinion.

2. The view expressed by D.B. Kamerkar in case No. A.J. - I.T. 16 of 1948 is more or less on the lines of the R.L.A's opinion No.314 dated 10-1-1948. The Hon'ble Mr. K.C.Sen while passing an order has made the following observations:

> "If this interpretation be correct the kinds of discharge sought to be controlled or regulated by section 33 of the Act would only be cases of discharge which are ordered by way of punishment. That would enable an employer to ~~xim~~ discharge any number of his employees, e.g by way of retrenchment, while an industrial dispute relating to him and his employees is still pending before a Tribunal. It is not clear why the legislature should have decided not to interfere with this kind of discharge but to limit the necessity for the Court's sanction only to cases of discharge which are ordered by way of punishment. For a discharge order can always be made without any reference to the question of any punishment being involved. It does not appear to me, however, that the legislature intended the kind of result which would follow on the interpretation adopted by the two Tribunals mentioned above. The greater possibility seems to be that the comma occurring after the word 'dismiss' is unnecessary, the intention being to couple 'or otherwise punish' with the word 'dismiss' alone and not also with the word 'discharge'. That commas have not been always correctly placed in the Act would also appear from the absence of a comma after the words 'No employer shall' (first three words of section 33) (compare

sub-section (1) of section 33). I do not ,

therefore think that it is necessary forme to follow the interpretation put on the section by the two Tribunals already mentioned."

With great respect, this interpretation of section 33 of the Industrial Disputes Act, 1947, is not correct. It is a well known principle that it is not competent to a Judge to modify the language of an Act of Legislature in order to bring it into accordance with his own views as to what is right or reasonable. Boni judicis est jus dicere, non dare jus dare. If the language is clear and explicit, it must receive full effect whatever may be the consequences and strictly speaking there is no place for interpretation or construction except where the words of a statute admit of two meanings (see Craies on Statute Law pp.88, 91) Whatever be its value as a punctuation mark in interpreting the statute, we do find a comma after the word "dismiss" and it is certainly not permissible to say that that comma should not have been there and was unnecessary; and it must be said with great repect that the inference that the comma was unnecessary does not arise from the fact that commas have not been correctly placed in other places in the Act. Apart from this consideration, the ejusdem generis principle undoubtedly applies in the interpretation of this provision and that is made absolutely clear by the words "except for misconduct" etc., which show that what is contemplated is a punitive measure and not an ordinary termination of contract for other reasons. In these circumstances, the R.L.A. would still adhere to his view expressed in his opinion No.314 dated the 10th January 1948.

Sd/-
29/4

Remembrancer of Legal Affairs.

U.R. to Labour Deptt. No. 4735 dated 30th April 1949.

Office of the R. L. A.

Question whether it is necessary to make liquidators party to the pr-ocedings before Tribunal-Industrial Disputes Act, 1947 - Section 18.

" The effect of a voluntary winding up is not to put an end to the corporate existence of the company. The Company exists until it is dissolved. The directors cease to function except in so f-ar as their powers are continued by the liquidator. The commencement of a goluntary w inding up d oes not operate as a stay of pr ocedings, nor does it prevent the institu tion of new proceedings. The liquidator is not treated as a trustee, either for the creditors or the congributories; he is really in th position of an agent of the Company" (see Sen's Company Law pages 545-546). The property of the Company does not vest in the liquidator (Amritlal V. Anukul 43 Cal 566). In the present case, the Company was would up voluntarily. The liquidators appointed being the agents of the Company will represent the Company in all proceedings before the Industrial Tribunal. When an awar(is made it will be binding on the Company and the Liquidators as agents will have to give effect to the award (cf. para 3 of R.L.A's opinion No.12070, dated the 5th December 1947) and section 18 of Industrial Disputes Act, 1947). Consequently it is not necessary to make the liquidators party to the dispute by amending the Labour Department Order No.118/48, dated the 24th December 1948.

Id/-
12/7

Remembrancer of Legal Affairs.

U.R. to Labour Department No. 7806
Dated the 12th July 1949.

Office of the R. L. A.

By order No. 2438/46 dated the 28th March 1948 the Government of Bombay referred to the Industrial Tribunal under section 10 of the Industrial Disputes Act, 1947 the industrial dispute between the Bombay Garage Ltd., Bombay, and the workmen employed under it in respect of matters specified in the Annexure "A" and item No. 6 mentioned in that Annexure was "Gratuity at the rate of one month's salary for every completed year of service should be given after minimum service of ten years." The Tribunal directed that gratuity should be paid to all employees covered by this adjudication on the scale given below:

(1) On the death ofan employee while in service of the Company, one month's salary for each completed year of service subject to maximum of 15 months' salary to his heirs or executors or nominees.

(2) On voluntary retirement or resignation of an employee after 15 years'continuous service in the Company, 15 months' salary.

(3) On the termination of his service by the Company-

(a) after completion of service of five years but less than ten years, half month's salary for every completed year of service;

(b) after ten years' continuous service in the Company, three-fourths of one month's salary for each completed year of service;

(c) after 15 years' continuous service in the Company, 15 months' salary.

(4) Gratuity will not be paid to an employee who is dismissed for dishonesty or misconduct.

The aforesaid award was accepted by Government and an order was passed accordingly making it binding on both the parties. On appeal against that decision of the Tribunal, sub-paragraphs (1) and (3) (a) of the award in respect of the gratuity were challenged as being without jurisdiction. The demand was for gratuity after a minimum period of service of 10 years and in appeal it was held that the Tribunal was not competent to

award any gratuity for service less than 10 years. As the result the relief in respect of gratuity to the extent mentioned in sub-paragraph (1) of the award relating to the demand under the sixth head, the award was held without jurisdiction and to that extent the rule was made absolute. The Labour Department has proposed to file an appeal against that order and the question now raised for consideration is whether the Tribunal is bound by the pleadings rigorously in making its award or whether it can pass an award in excess of impleading if on hearing parties and taking evidence it thinks fit to do so.

Under section 10 of the Industrial Disputes Act, it is competent for Government to refer an indus-trial dispute for decision to a Tribunal. It is nowhere stated in the Act as to how the particulars of the industrial dispute have to be ascertained and finalised. Under section 11 the Tribunals shall, subject to the provisions of this Act, follow such procedure as may be prescribed. Sub-section (3) prescribes certain procedure in respect of enforcing attendance of witnesses, compelling production of documents, issuing of commissions, etc. Rule 13 of the Industrial Disputes (Bombay) Rules, 1947, provides that at the first sitting of the Tribunal the Chairman shall call upon the parties in such order as he may think to state their cases. It is clear from these provisions that it is not necessary that, while making the reference, Government should precisely state the items constituting the industrial dispute and it would be sufficient if those items are broadly stated so that on a notice being issued to the parties, it would be open to the court to finalise those items after hearing the parties. In the present case if appears from the award that the demand of the workers was that the

Company should be directed to pay gratuity at the rate of one month's salary for every completed year of service to every employee on his leavingthe service of the Company or on the termination of his services by the Company if such worker has put in a minimum service of 10 years. The condition about minimum service of 10 years was conceded by the workers themselves and still this condition was not attached to the grants of gratuity as per sub-paragraph (3) of the award.

It is clear from these facts that in failing to attach the condition of minimum service, the court has acceded it-s jurisdiction in the sense that it was beyond its power to grant relief to that extent. The Industrial Disputes Act is more or less modelled on the Commonwealth Conciliation and Arbitration Act, 1904-1934 of Australia. Unier section 38 (b) of the Australian Act, power vests in the court to make any order or award (including any provisional or interim order or award relating to any or all of the matters in dispute) or give any direction in pursuance of the hearing or determination, and under clause (u) the court can give such directions and do all such things as it deems necessary or expedient in the premises. In interpreting these provisions the High Court of Australia in Rex. v. Commonwealth Court of Conciliation and Arbitration (8 C.L.R. 419) held:

> "Though the Court is not bound to award the particular form of relief claimed in the plaint, and though it may, under section 38, sub-section (u) deal with all matters incidental or ancillary to the dispute submitted to it, and make such order as it deems expedient for the settlement of the dispute, it has no jurisdiction to make an award as to matters not substantially involved in or connected with the dispute. So, where the court embodied in its award for the settlement of an industrial dispute properly submitted to it directions making important changes in conditions of employment, as to which no claim had been made in the original plaint, as to w-hich there had not been in fact any dispute between the parties, which were altogether unconnected with the matter submitted to the court, and which the court had

> refused on those grounds to incorporate in the plaint by amendment, and consequently, the court had exceeded its jurisdiction in so far as it purported to deal with those matters and should restrained by prohibition quoad hoc from proceeding to enforce its award."

In view of this decision, the Australian Act was amended by inserting section 38B which provides:

> "In making an award or order, the court or a Conciliation Commissioner shall not be restricted to the specific relief claimed by the parties to the industrial dispute, or to the demands made by the parties in the course of the dispute, but may include in the award or order any matter or thing which the court or the Commissioner thinks necessary or expedient for the purpose of preventing or settling the dispute or of preventing further industrial disputes."

Even this provision has been construed as not giving the court power to do anything which none of the parties asked the opponent party to do in the first place (see 36 C.A.R. 441). It is an elementary principle that the Court cannot give a party that to which upon his own showing he is not in law entitled (see Broom's Legal Maxims, p. 84). In the present case, the Tribunal has not stated as to why the relief in respect of gratuity was released from the condition of the minimum service of 10 years. Reading the judgment in respect of the demand for gratuity, one gets an impression that the court in granting relief of gratuity seems to have lost sight of this condition. Attention is invited to the observation of O'Connor J. on pages 449-50 and to the observations of Isaacs J. at p. 457 in 8 C.L.R. 419. These observations relate to the powers of a tribunal constituted under an Act for a special purpose. Considered in the light of these observations, it appears to me that the view taken by the High Court in appeal against the decision of the Tribunal that it exceeded its jurisdiction in ignoring the condition relating to the minimum service of 10 years is correct.

Sd/- P.N.Lal,

Remembrancer of Legal Affairs.

...x. to Labour Deptt. No. 6431, dated the 11th/ June 1949.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

In Appeal from Its Original Jurisdiction.

In Its Inherent Jurisdiction.

Appeal No. of 1949.

Misc. No. of 1949.

The Bombay Garage Ltd. .... Petitioner.

Vs.

The Industrial Tribunal. .... Respondent.

A D V I C E.

1. The Government of Bombay (the Provice of Bombay) was not a party to the proceedings before Mr. Justice Tendolkar. The Government of Bombay was not even served with a notice und High Court Rules as a party likely to be affected by the -- decision. The Province of Bombay was not before the Court -- either as a party to the proceedings or as one served under the High Court Rules. In the matter of the W.I.A.Association the Provice of Bombay was served and Government did appear at the hearing of the petition before Mr. Justice Coyajee and took part in the proceedings though not a party. It was under these circumstances, that the Appeal Court allowed the Provice of Bombay to appeal though not a party to the proceedings. The extention of the principle that a party not being a party to the proceedings may be allowed to appeal with the permission of the Court may be justified on the facts of that case but it cannot be extended wherein Government was neither served, nor took any part at the hearing. It is true, that the language used by the Appeal Court is general and wide but in my opinion it will be construed having regard to the facts of that case.

2. There is another element which distinguishes the W.I.A. Case from this case. In the W.I.A.A.Case the point of dispute was the construction of the section of the Industrial Disputes Act, 1947 whether having regard to the definition of "industrial Dispute" in the Act it was competent to the Provincial Government to refer the question of reinstatement. In other words it

it was a matter of the construction of our Act, hence Government, may be considered to be vitally affected and hence may be allowed to appeal. In this case there is no question of the construction of the Act. The only point decided by the High Court is that the Tribunal has made an award beyond the demand i.e. without specifying the minimum period to qualify the workmen to get gratuity. It may be a wrong decision beyond the jurisdiction hence it is quashed This is a matter interpartes. How is the Government affected there is no question of interpretation. If it is to be contended that the decision has a far reaching effect as regards relation between the employers and the employees in this sense every decision has such effect, and that alone does not entitle Government to appeal.

In my opinion it is difficult for Government to appe... in this matter and an appeal by Government will be unsustainable as Government is not entitled to appeal for the reasons set out above.

5. Apart from the difficulties of the Government to file an appeal the appeal is entirely time-barred. Government not being a party to the Petition in the Court of first instance, is not entitled to deduct the time taken for obtaining copy of the judgment.

4. On both grounds Government cannot now file an appeal. However, if it is to be filed, I have drawn up the memo of appeal and also a petition for getting permission of the Appeal Court to file the appeal.

Sd/- G.N. Joshi,
1/6/49.

Office of the R. L. A.

{ Questions whether strike commenced after referring the dispute for adjudication would be illegal.

Industrial Disputes Act, 1947.

Sections 23, 33.

It appears that by order No.1439-46, dated the 9th April 1949, issued under section 10(2) of the Industrial Disputes Act, 1947, the Labour Department referred the dispute between Messrs. Allibhoy Sharafally and Company, Ltd., Bombay, and its workmen for adjudication to the Industrial Tribunal. Before the reference was made for adjudication, it appears that on 26th March 1949 the management owing to depression served notices of discharge on about 50 employees with effect from 11 th April 1949. As a retaliatory measure the Union served a notice of strike on the management on 8th April 1949, and the workers actually went on strike from 11 th April 1949 i.e. two days after the adjudication order was ~~issued~~ issued by Government. Secretary, Labour Department, is of the view that the strike which was commenced during the pendency of adjudication proceedings is legal. The R.L.A. is ~~xxx~~ requested to advise.

2. Section 23 of the Industrial Disputes Act, 1947, provides that no workman who is employed in an industrial establishment shall go on strike in breach of a contract, and no employer of any such workman shall declare a lock-out -

(a) during the pendency of conciliation proceedings etc.

(b) during the pendency of proceedings before a Tribunal and two months after the conclusion of such proceedings, or

(c) during any period in which a settlement or award is in operation etc.

Under section 24 a strike which is commenced or declared in contravention of section 22 or which is continued in contravention of an order made under sub-section (3) of section 10 shall be illegal. Since the strike was not in existence at the time of the

date of the adjudication order, the only point material for consideration would be whether it is commenced or declared in contravention of section 23. A strike, as pointed out above, would be illegal under section 23 only if the workers go on strike in breach of a contract during the pendency of proceedings before a Tribunal etc. The second part, namely, the pendency of proceedings before a Tribunal is duly complied with. But it is not known whether the first part, namely, the breach of contract is also complied with. The strike would be illegal only if it can be proved that the workmen went on strike in breach of contract. The Labour Department should verify from the conditions of service whether such strike on the ground of discharge of certain employees as a measure of retrenchment would be a breach of contract.

Sd/-
29/7
Remembrancer of Legal Affairs.

U.R. to Labour Deptt. No. 8603 dated 30th July 1949.

Minutes of the meeting held on 21st July 1949 in the Secretariat to consider the question of declaration of certain services in Bombay relating to gas and petroleum as essential under the Bombay Public Security Measures Act.

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PRESENT.

Secretary, Home Department,
Secretary, Legal Department,
Secretary, Labour Department,
Commissioner of Police,
Representatives of the following Gas and Oil Companies:-

(1) Bombay Gas Company,
(2) Burmah-Shell Oil Storage and Distributing Company,
(3) Caltex (India), Limited,
(4) Indo-Burma Petroleum Company,
(5) National Petroleum Company,
(6) Standard Vacuum Oil Company,
(7) Western India Oil Distributing Company.

After preliminary remarks by Secretary, Home Department, the following points were considered:-

(1) The interpretation of the expression "justifiable excuse" occurring in clause (ii) of sub-section 3 of section 5 of the Bombay Public Security Measures Act, 1947 which deals with offences by an employer in respect of discontinuance of employment of workers etc. Two questions were raised: firstly, whether action taken in accordance with standing orders of a company would ipso facto amount to "justifiable excuse" within the meaning of the clause and, secondly, whether the employers would be called upon to establish in a court of law a "justifiable excuse" in connection with the discontinuance of employment of an employe arising e.g. out of resignation, retirement, grant of leave, etc.

Secretary, Labour Department, pointed out that ordinarily action under standing orders except in case of closures would amount to "justifiable excuse" and that if there was a dispute on this point, it would have to be settled as a labour dispute in accordance with the provisions of the Industrial Disputes Act 1947 and the rules thereunder.

(2) With regard to the later aspect of the question, i.e. production of evidence in a court of law that discontinuance of employment was with "justifiable excuse", the general question of prosecution of an employer was considered. It was pointed out that though the offences under the Act are cognisable ordinarily a complaint against an employer made to a court of law would be sent to the Police for enquiry, but the possibility cannot be ruled out of prosecution being launched against employers by a third party and of a court proceeding with such prosecution without a preliminary enquiry through the Police. It was accordingly decided that provisions on the lines of section 34 of the Central Industrial Disputes Act, 1947, (XIV of 1947) should be inserted in the Bombay Public Security Measures Act. That section provides that no court shall take cognisance of offences punishable under the Act or abetment thereof save on "complaint made by or under the authority of the Provincial Government". Such provision would obviate all difficulties felt by employers. Since however the safeguard to be introduced in the Act against frivolous or vexatious

prosecutions would have to be extended to all prosecutions including those against employees, the provision may be in some form like the following:- "Complaint made by the Provincial Government or by an officer authorized in this behalf by the Provincial Government by a general or special order".

(3) The question was raised wether the absence from employment of an employee who has been convicted and sentenced to imprisonment under the Bombay Public Security Measures Act would be "justifiable" cause for discontinuing his services. It was thought that this was a matter which could be appropriately settled by provisions made in the standing orders.

(4) The question of discontinuance of employment on account of acceptance of resignation, grant of permission to retire from service, and grant of leave etc. was next taken up. It was thought that the expression "discontinuance of employment" was wide enough to include all these cases but that no separate action was necessary on this point in view of the decision to make provision in the Bombay Public Security Measures Act on the lines of section 34 of the Central Industrial Disputes Act, 1947.

(5) With regard to the categories of staff which should be notified under the Act, it was agreed that all categories of the staff of gas and oil companies should be notified as essential under section 5 of the Bombay Public Security Measures Act, with reference to the entries "Gas and ~~gas~~ gas works", "Trade and commerce" and "Production, supply and distribution of goods" at Serial Nos. 26,27 and 29 of the Provincial Legislative List in the Seventh Schedule of the Government of India Act, 1935.

(6) The latter portion of sub-section (11) of section 5 of the Bombay Public Security Measures Act provides that the Provincial Government may direct that any person or persons engaged in essential services shall not depart out of such area or areas as may be specified in the order. It was agreed that before an order under this provision is passed by Government, the Companies would be consulted regarding the areas in which various categories of staff are requested to move for purposes of their duties.

(7) Sub-section (4) of section 5 of the ~~Bombay~~ Bombay Public Security Measures Act provides that if the person contravening the provisions of the section is a company or other body corporate, every director, manager, secretary or other officer or agent thereof shall be deemed to be guilty unless he proves that the contravention was without his knowledge etc.

It was pointed out that the words "secretary, or other officer or agent thereof" would not be construed as to include, say, a "superintendent" or an 'executive' officer, in view of the definitions in section 2 of the Indian Companies Act (VII of 1913).

Question whether prosecution can be launched for closure of factory during adjudication proceedings.

Industrial Disputes Act, 1947, sections 2(1),23,33.

Under section 23 of the Industrial Disputes Act, 1947, 'lock-outs' during the pendency of proceedings before a Tribunal and two months after the conclusion of such proceedings are prohibited, and under section 33 no employer save with the express permission in writing of the conciliation officer, Board or tribunal, as the case may be, shall during the pendency of such proceedings discharge, dismiss, or otherwise punish any such workman, except for misconduct not connected with the dispute. Admittedly, the management in the present case discharged all workers on 1-6-1949 during the pendency of the proceedings before the tribunal. Consequently, the management has committed a breach of section 23 as well as of section 33. It is true that if the Factory cannot keep its men at work because it has no work for them to do, then it cannot be considered to be a lock-out within the meaning of clause (1) of section 2 of the Act. (See Richardsons and Samual & Co. 1897. 66 Law Journal Q.B.D. p.868). The management has alleged that the factory was closed for want of raw materials for manufacturing textile machinery and spare-parts. If this allegation is substantially true the question of prosecuting the management for the breach of sections 23 and 33 would not arise as the closure of the factory could not be considered a 'lock-out'. But it appears that the management is not prepared to furnish information

regarding the position of the raw-materials and the Deputy Commissioner of Labour (Administration) appears to be of the view that the management has deliberately locked out the workmen. The question whether the management closed the factory for want of raw-materials as alleged is a question of fact. The management may be given an opportunity of establishing that fact and may be informed that they would otherwise have to be prosecuted. If they fail to establish that they closed the factory for want of raw materials, a prosecution may be launched.

Id/-

1/9

Remembrancer of L___ _____

U.R. to Labour Department No. 9960 dated 2nd Sept. 1949.

A

Office of the R. L. A.

Question whether the demand re. reinstatement can be referred to adjudication Industrial Disputes Act, 1947 -- sec.10.

The Management of the Metro Theatre does not agree that the case is a fit one for adjudication as the Union is not entitled to revive the demand which was given up and withdrawn by them and it is not competent for Government to again refer this demand to the Tribunal (pp.25-33 ante). The R.L.A. is requested to advise whether legally it is feasible to make a fresh reference to adjudication on the issue of reinstatement of Mr. Redkar.

2. As already held by the R.L.A. in his opinion No.6668, dated 16-6-1949, there is no legal objection to referring demand No.VII regarding reinstatement of Mr. Redkar as a new dispute for adjudication under section 10 of the Industrial Disputes Act, 1947. But it appears from the letter of the Manager of the Metro, Theatre, Bombay, Ltd. that the Union has not made any demand whatsoever on the company for reinstatement of Mr.Redkar. If this is correct then it would be necessary that the Union should first make a demand pointing out the authority of the Federal Court in the W.I.A.A.Case. Only when the demand is rejected by the management a dispute can be said to have arisen. It is only when the demand is rejected an application in Form I to the Industrial Disputes (Bombay) Rules, 1947, can be made by the Union. (See Rules 3 and 4). Because the dispute must be a real dispute and not imaginary (see Holyman's Case (1914) 18 C.L.R. 275; 20 A.L.R.429 in Commonwealth Industrial Conciliation Law p.7). When this procedure is gone through Government would be competent to refer the dispute as a fresh dispute to adjudication under sec.10 of the Act.

IA/-
20/8
Remembrancer of Legal Affairs.

U.R. to Lab.Dept., No. 9447 , dated the 22nd August 1949.

Office of the R. L. A.

Section 2(n) (vi) of the Industrial Dispute Act, 1947, defines the "public utility service" inter alia to mean any industry specified in the Schedule which the appropriate Government may, if satisfied, that public emergency or public interest so requires, by notification in the Official Gazette declare to be a public utility service for the purposes of the Act, for such period as may be specified in the notification. Transport (other than Railways) for the carriage of passengers or goods by land, water or air has been specified as an industry in the Schedule. The word "industry" has been defined in section 2(j) to mean any business, trade, undertaking, manufacture or calling or employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen. Reading the provisions of section 2(n)(vi) with the provisions of section 2(j) it would be competent for the Provincial Government to declare the units of any industry to be a public utility service if the Provincial Government is satisfied that public emergency or public interest requires it to be so declared.

Id/-
29/9
Remembrancer of Legal Affairs.

U.R. to Lab.Deptt., No. 11952, dated the 4th 4th Oct.

Office of the R. L. A.

Questions whether in view of the Industrial Disputes (Banking Insurance Coy's) Ordinance, 1949 Govt. can make a reference to the Tribunal for clarification of the award.

Industrial Disputes (Banking Insurance Companies) Ordinance, 1949.

Industrial Disputes Act, 1947.

By P.& S.D. order No.1521/46, dated 24-12-1947, issued under section 10(2) of the Industrial Disputes Act, 1947, the dispute between the Bombay Mutual Life Assurance Socie. Ltd., Bombay and the workmen employed under it was referred for adjudication to the Industrial Tribunal. The Industrial Tribunal gave its award and the same was published under section 17 of the Act in the Bombay Government Gazette dated 17-2-1949. Sub-section (3) of section 20 provides that proceedings before a tribunal shall be deemed to have concluded when the award is published by the appropriate Government under section 17 or where an award has been laid before the Legislative Assembly under the proviso to section 15(2) when the resolution of the Legislative Assembly is passed thereon. The award in the present case was published on 17-2-1949. The proceedings before the tribunal must therefore be deemed to have been concluded. Sub-section (1) of section 6 of the Industrial Disputes (Banking and Insurance Companies) Ordinance, 1949, provides that if any proceedings in respect of or arising out of such reference were immediately before such commencement pending before any tribunal or other authority, then on the date of such commencement such reference shall be deemed to be withdrawn and all such proceedings shall abate. A legal proceeding is said to be pending as soon as it is commenced and until it is concluded (see Iyer's Law Lexicon p.952). Since the proceedings before the tribunal have been concluded they can neither be withdrawn nor abated under section 6(1) of the Ordinance. Section 4 of the Ordinance provides that notwithstanding anything contained in any other law, it shall not be competent for a Provincial Government or any Officer or authority subordinate to such Government to refer an industrial dispute

concerning any banking or insurance company, or any matter relating to such dispute, to any tribunal or other authority for adjudication inquiry or settlement. It would therefore be clear that this Government would not be competent to make a reference whether for clarification or otherwise to an industrial tribunal under the Industrial Disputes Act and the only course appears to be is for the Union to approach the Central Government under section 6(1) of the Ordinance for getting doubtful points clarified by a reference to the tribunal.

Sd/-
15/9
Remembrancer of Legal Affairs.

U.O. to Labour Department No. 10538, dated the 17th September 1949.

R.L. No. 18155 dated 7-11-49.

Submitted.

2. In pursuance of the power under section 35(3) of the Bombay Industrial Relations Act, 194 (Bom. XI of 1947) Govt. have in G.N.L.D.No.22/48-I II dated 18-9-48, framed model standing orders in respect of operatives and clerks in Cotton, Silk, Woollen and Hosiery Textile industries. Standing Orders 24 in Schedule I to the said Notification provide that an operative guilty of misconduct may be warned or censured and fined. Standing Order 25 thereof enumerates the acts and omissions for which an operative may be warned, censured or fined. These Model Standing Orders, it is stated, were framed on the lines of the Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946 and the Standing Orders under the repealed Bombay Industrial Disputes Act, 1938, and Notified without reference to the R.L.A. The Commissioner of Labour has now pointed out the Bombay Industrial Relations Act, 1946 does not refer to warning, censuring and fining and therefore these Standing Orders are ultra-vires. Secretary, Labour Dept. agrees with this view and has proposed to amend item 11 in Schedule I to the Act under Section 113 for the purpose. The R.L.A. is requested to advise.

Sd/-
12/11.
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A.A.S. agree
Reply may be ----
"Seen and returned.
The view expressed by Secy.
Labour Dept. in his note of
4.11.49, is correct."
SD/- A.L.R. Id/-
15/11 16/11

R.L.A. 16/-

16/11.

U.R. to Labour Deptt. No. 13065 dt. 17-11-1949.

Office of the R. L. A.

Industrial Disputes Act, 1947, section 15(2) proviso: Dispute between State Transport and workmen at Ahmedabad and Kaira.

By order dated the 19th October 1949 the Labour Department has referred the dispute between the State Transport and the workmen employed under it at Ahmedabad and Kaira in regard to their salari and conditions of service to the Industrial Tribuna for adjudication under sub-section (1) of section 1 of the Industrial Disputes Act, 1947 (XIV of 1947). Under section 15 of that Act the Tribunal has to hold its proceedings expeditiously and to submit its award to the Provincial Government . Under sub-section (2) the Provincial Government has to declare the award to be binding. The proviso to that sub-section provides that if the appropriate Government is a party to the dispute and in its opinion it would be inexpedient on public grounds to give effect to the award, it has to lay the award before the Legislative Assembly. In connectio with these provisions the Provincial Motor Transpor Controller has raised the question whether this safeguard would be available when the State Transport Corporation comes into existence and whether Government can be considered to be a party to the dispute then. The R.L.A. is requested to advis-e on this question.

8. It appears that by Government Notifica-tion, Home Department No. 1780/5, dated the 16th November 1949, issued in exercise of the power conferred by section 3 of the Road Transport Corporation Act, 1948 (XXXII of 1948), the Provincial Government has appointed the Bombay State Road Transport Corporation with power to operate road transport services in the Province.

Under clause 2 of the notification the Corporation s-hall have a Board consisting of nine members. Clause 12 gives power to the Board to appoint a Secretary and such officers and servants for the performance of its functions on such terms and conditions as may be determined by regulations made under the Notification. There is no provision in the Notification as regards the existing staff working under the State Transport Department. The difficulty which the Provincial Motor Transport Controller has raised in the concluding paragraph o his letter will in fact arise when the Board of the Corporation is formed and starts functioning and takes over the existing staff of the State Transpor It is presumed some provision will be made for the transfer or taking over of that staff as proposed in ~~sim~~ clause 33 of the draft Bill. If at the time the Industrial Tribunal gives out its decision unde section 15 of the Industrial Disputes Act, 1947, th said staff is in the employ of, and is being paid b the Corporation the Provincial Government cannot be said to be party to the dispute and the provision in the proviso to sub-section (2) of section 15 will not be attracted.

Id/-
23/11
Remembrancer of Legal Affairs.

H.R. to R.D. No. 13400, dated the
22rd November 1949.

Office of the R. L. A.

Industrial Disputes Act, 1947, section 10. Whether dispute between one Mr. Bhapuskar and his employees can be referred to Tribunal for adjudication.

The question referred to R.L.A. is whether in the event of any reference being made for the adjudication under section 10 of the Industrial Disputes Act, 1947, the employer is likely to obtain any order from the High Court restraining the Industrial Tribunal from proceeding with its proceedings on the technical ground of the existence of an award between him and his employees.

2. It is true that the dispute between the employer and his employees in the present case was adjudicated upon by Dr. Ranganekar but the award has not been filed in the Civil Court. Besides the award itself appears to be prima facie illegal, for under section 4 of the Arbitration Act, 1940, an agreement of submission for arbitration is essential giving the authority to the Arbitrator to adjudicate between the parties and the "Arbitration agreement" is defined in section 2(a) as "a written agreement to submit present or future differences to arbitration, whether an Arbitrator is named therein or not". In the present case, it is admitted that there was no such written submission to arbitration authorising Dr. Ranganekar to decide the dispute. Consequently, the illegality of the award is apparent upon the face of it and it would, therefore be difficult for the employer to get any order of the High Court restraining the proceedings before the Industrial Tribunal if appointed under section 10 of the Industrial Disputes Act, 1947.

Sd/-
9/12

Remembrancer of Legal Affairs

U.R. to Labour Deptt. No. 14817 dated the 9th December 1949.